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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON

9 In Re the Trustee's Sale of the real property
10 of:

11 SAMUEL M. WRIGHT and DIANA L. WRIGHT
12 (the Grantors

Case No.: 2:21-cv-00024-MLP

**QUALITY LOAN SERVICE
CORPORATION OF
WASHINGTON'S RESPONSE TO
MOTION FOR SUMMARY
JUDGMENT**

13 NOTE ON MOTION CALENDAR: July 2,
14 2021

15 COMES NOW, Quality Loan Service Corporation of Washington ("QLS"), making this
16 Reply to the United States' Motion for Summary Judgment noted for hearing on July 2, 2021.

17 **A. QLS Is Entitled to Its Fees and Costs**

18 QLS does not oppose the United States' motion generally. However, it does oppose any
19 attempts by the United States to strip it of its duly earned fees and reasonably incurred costs.

20 Under Washington state statute RCW 61.24.080, the order of the disposition of the proceeds
21 of sale is the trustee and its attorneys, the obligation secured by the deed of trust, and then to any
22 lienholders.

23 Under RCW 61.24.080(3), the trustee is required to deposit any surplus funds with the clerk
24 of the court along with a written notice of deposit. That notice of deposit is required to be mailed to
25 all interested parties. Since this is an interpleader filed with the court, attorneys' fees are accrued in
26 the preparation of the notice. Costs are also incurred for mailing the notice to all required parties.
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1 These fees and costs are incurred by the trustee during the execution of its statutorily required
2 obligations under a non-judicial foreclosure sale.

3 Under RCW 61.24.080(1), the trustee is entitled to the “expense of the sale, including
4 reasonable charge by the trustee and by his or her attorney.” Because the depositing of the funds and
5 the requisite notice is required by statute under RCW 61.24.080(3) as part of the non-judicial
6 foreclosure process, a trustee is entitled to those funds under RCW 61.24.080(1). The fact that the
7 deposit process is part of a non-judicial foreclosure is bolstered by the process being included in the
8 Deed of Trust Act, RCW 61.24, which outlines all of the necessary procedures for a non-judicial
9 foreclosure.

10 Under the United States’ argument that a lienholder has priority over even the trustee, the
11 trustee would not even be able to collect its fees for conducting the trustee’s sale itself because the
12 foreclosure was after the IRS liens were created. This is counter to the state’s governing statute.
13 Further, the United States cites *Abex Corp. v. Ski’s Enterprises, Inc.*, 748 F.2d 513, 516-517 (9th Cir.
14 1984) for the proposition that fees and costs could be recovered if they were part of the non-judicial
15 foreclosure. As argued above, by Washington statute, they are.

17 Conclusion

18 QLS is entitled to its attorney’s fees and costs by law. The order of disposition of the sale
19 proceeds in Washington are 1) the trustee and its attorney 2) the debtholder and then 3) the
20 lienholders. The United States is only a lienholder and only has priority over other lienholders and
21 the debtor. The United States’ Motion should be denied as to its claim for QLS’s lawful and
22 appropriate fees and costs.

23 Dated: June 4, 2021

24 /s/ Warren Lance

25 _____
26 McCarthy & Holthus, LLP
27 Warren Lance WSBA #51586
28 Attorney for Quality Loan Service
Corporation of Washington

1 CERTIFICATE OF SERVICE

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3 I certify that on June 4, 2021, I electronically filed the foregoing Response to Motion for

4 Summary Judgment, with the Clerk of the Court using the CM/ECF system which will send

5 electronic notification of such filing to the following person(s):

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15 s/ Warren Lance

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17 Of Attorneys for McCarthy & Holthus, LLP

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